



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: GE American Communications, Inc.  
File: B-229725; B-229726; B-229727  
Date: March 4, 1988

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### DIGEST

Protest that agency improperly evaluated awardee's price as low is sustained where the awardee proposed a 12-month basic termination liability (BTL) charge to the government and the solicitation provided that in evaluating price a BTL charge for any period of time that exceeded the contract's estimated service life of less than 12 months would be considered.

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### DECISION

GE American Communications, Inc., protests the award of a contract to Contel ASC under Defense Communications Agency (DCA) telecommunications service request (TSR) Nos. AY27-MAY-87-0087/I, -0088/I, and -0089/I. The contract is to provide telecommunications service between Kirtland Air Force Base in New Mexico and three other Air Force bases in the United States. GE contends that DCA improperly evaluated the cost proposals.

We sustain the protest.

Each TSR provided that award would be made to the firm submitting the offer most advantageous to the government, price and other factors considered. As issued, the TSRs stated that the contract's estimated service life was 12 months. DCA subsequently amended the TSRs to state, among other things, that the service life was "less than 12 months." Also, each TSR included the following statement with respect to offers that might include termination liability charges to the government:

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". . . If the inquiry [the TSR] contains an estimated service life, that period of time will be used for cost evaluation purposes. If no estimated service life is specified, evaluation will be based on a service life of one month. Should your offer contain any charges or other liability provisions for recoupment of unamortized invested capital which extend beyond the government's estimated service life, these items will be added to the total cost evaluation. . . ."

GE and Contel submitted the two lowest offers. GE quoted a monthly recurring charge of \$2,879 for each TSR; Contel quoted a monthly charge of \$2,700. Contel also quoted a basic termination liability (BTL) charge of \$32,400 for each TSR, "to be reduced by 1/12 for each month in service." DCA disregarded the BTL charge and awarded the contract to Contel as the lowest cost offeror.

GE argues that a service life of "less than 12 months" as stated in the TSRs means a service life of no more than 11 months. GE protests that one-twelfth of the BTL quoted by Contel therefore must be considered in the cost evaluation, since the BTL proposed by Contel exceeds the service life by at least 1 month. Under that theory, GE would be the lower-evaluated offeror.

Initially, we note that DCA contends the protest is untimely under section 21.2(a) of our Bid Protest Regulations, 4 C.F.R. part 21 (1987). DCA argues that the basis for protest involves an alleged ambiguity in the TSR statement of service life and, according to section 21.2(a)(1), therefore had to be raised before proposals were due. GE first complained about the matter after that time, however, in a protest to the contracting officer; the protest to our Office followed the contracting officer's denial of the protest at that level. DCA points out that since section 21.2(a)(3) of our Regulations states that we will consider an appeal from the denial of an agency-level protest only if the initial protest itself was timely, we should dismiss GE's protest without reaching the merits.

We disagree, because we do not view the basis for protest as an ambiguous TSR statement. Rather, GE is complaining about the way proposals were evaluated in light of what the firm thinks is the only reasonable reading of the TSR. As such, the protest is timely under section 21.2(a)(2) of our Regulations, which applies to other than apparent solicitation improprieties, since GE protested within 10 working days after the basis for protest was known to GE, which was when GE learned of the way offers were evaluated.

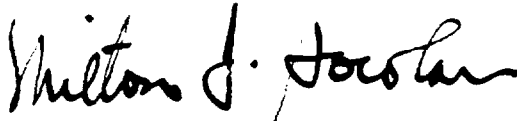
Concerning the merits of the protest, DCA does not dispute GE's position that the TSR statement on service life imports a service life of 11 months. DCA argues, however, that Contel's proposed BTL did not, in effect, exceed that period of time. DCA notes that under a Federal Communications Commission tariff that is applicable to the present procurement Contel is guaranteed 30 days notice of contract termination and thus will perform for at least 1 month. DCA argues that since Contel is guaranteed 1 month performance and Contel's BTL will be reduced by one-twelfth for each month it performs, Contel in fact is offering an 11-month BTL on the basis that if the contract continues to the beginning of month 12, Contel's BTL will have been reduced to zero at that time.

We do not follow DCA's analysis. The solicitation provides that the estimated service life of the contract is less than 12 months, and the only way to read Contel's offer in that respect is that it included a BTL of 12 months (since the BTL would be reduced by one-twelfth for each month of service). The fact is that if DCA gave Contel 30 days termination notice at the beginning of month 11, Contel would perform for 11 full months and, since Contel's BTL extends for 12 months, DCA would be liable for 1 month of BTL. In other words, it is irrelevant that DCA might give Contel notice at the beginning of month 12--DCA might just as easily give notice at the beginning of month 11--because the term of Contel's BTL will always exceed the contract's estimated service life by 1 month.

Where a solicitation states the basis on which offers will be evaluated, the agency's evaluation must conform to the stated method. See Harnischfeger Corp., B-224371, Sept. 12, 1986, 86-2 CPD ¶ 296. Since the solicitation provides that the cost of any proposed BTL for any period of time that exceeds the estimated service life would be added to the offeror's proposed costs, we think DCA was required to add a minimum of one-twelfth of \$32,400, or \$2,700, to Contel's proposed costs per TSR. If DCA had done so, Contel's evaluated cost would be \$32,400 per TSR (11 months estimated service life multiplied by \$2,700 proposed monthly charge plus \$2,700 BTL). GE's proposed cost per TSR is \$31,669 (11 months estimated service life multiplied by \$2,879 proposed monthly charge). Thus, under an evaluation based on the minimum BTL applicable--the basis most favorable to Contel--GE is the low offeror.

We sustain GE's protest. The record shows that DCA stopped all contract work on September 30, shortly after the award, although DCA advises that Contel's estimate of cancellation charges is \$15,840. (The BTL would not apply because service was never begun.) Notwithstanding these estimated

charges, by separate letter to DCA we are recommending that, since GE clearly was entitled to the award from the outset, the agency terminate Contel's contract and award the contract to GE, if otherwise appropriate.

*for*   
Comptroller General  
of the United States